

REMARKS

The Office Action dated July 9, 2010, has been received and carefully noted. The above amendments and the following remarks together with the attached Request for Continued Examination (RCE) are submitted as a full and complete response thereto.

Claims 1, 3-33, and 35 are rejected. By this amendment, Claims 1, 3-5, 7-32, and 35 are amended, and Claims 6 and 33 are cancelled. Thus, Claims 1, 3-5, 7-32, and 35 are pending in this application. Support for the amendments may be found in the specification as originally filed, for example page 7, lines 28 to 32. Applicants submit that no new matter is added. Applicants respectfully request reconsideration and withdrawal of the rejections.

Claim Rejections – 35 U.S.C. §112

Claims 1 and 3-33 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In particular, the Examiner stated the phrase “in comparison to a comparable edible product which does not comprise plant sterol” is unclear.

Claims 1 and 3-32 are amended in a manner believed to be fully responsive to the rejections. Claim 33 and 34 is canceled. Applicants respectfully request withdrawal of the §112 rejection of claims 1 and 3-33.

Telephonic Interview

Applicants respectfully acknowledge and appreciate the courtesies extended by the Examiner to Applicants' representative during the telephone interview conducted on November 30, 2010. The points discussed during the interview are incorporated herein. In particular, during the interview, Applicants' representative discussed with the Examiner that the claims, as amended in this Response, are intended to recite particular method steps that distinguish over the cited references. Applicants' representative noted that the steps of providing an amount of sweetening agent that is insufficient to entirely mask a bitter taste of an edible product and adding a plant sterol ester in an amount that, in combination with the sweetening agent, is effective to mask the bitter taste, have been added to the claims in an attempt to capture the concept described on page 7, lines 27 to 32 of the instant application. More specifically, Applicants representative explained that the instant invention recited by claim 1 involves using less sweetening agent than would normally be present in an edible product because plant sterol ester has been added to overcome an undesirable flavor in place of a sweetening agent. In other words, when comparing a "regular" edible product (e.g., an off-the-shelf yogurt product) to the instant invention, the instant invention would comprise less sweetening agent than the "regular" product because plant sterol has replaced a portion of the sweetening agent. The Examiner appeared to understand the conceptual feature that Applicants intend to recite in the claims. As discussed in the interview, Applicants welcome any suggestions by the Examiner on proposed claim language.

Claim Rejections – 35 U.S.C. §102/§103

Claims 1, 3, 4, 7, 8, and 32 are rejected under 35 U.S.C. §102(b) as being anticipated by Sarama et al. (WO 01-54686, hereinafter “Sarama”); claims 5, 6, 9, 11, 12, 20-23, and 29-31 are rejected under 35 U.S.C. §103(a) as being unpatentable over Sarama; claims 10 and 13-18 are rejected under 35 U.S.C. §103(a) as being unpatentable over Sarama in view of Yoon et al. (WO 02/28204, hereinafter “Yoon”); and claims 19 and 24-28 are rejected under 35 U.S.C. §103(a) as being unpatentable over Sarama in view of Vulpson et al. (WO 00/41491, hereinafter “Vulpson”).

Claim 1, as amended, recites “[a] method for preparing an edible product comprising a sweetening agent for masking a bitter, sour and/or astringent taste of the edible product, the method comprising: providing an amount of sweetening agent that is insufficient to entirely mask the bitter, sour and/or astringent taste of the edible product; and adding a plant sterol ester in an amount that, in combination with the sweetening agent, is effective to mask the bitter, sour, and/or astringent taste of the edible product, wherein the amount of plant sterol ester added is from 0.2 to 25% by weight.” Independent claims 10-33 each recite similar features to claim 1.

Applicants respectfully submit that Sarama does not teach or suggest each and every feature recited by claim 1. Sarama discloses compositions comprising a combination of L-arginine and a sterol, stanol, esters thereof, or polyol fatty acid polyester. Sarama discloses that the sterol component “diminishes and/or removes the unacceptable flavor associated with the L-arginine.” See page 2, paragraph 3. Applicants submit, however, that Sarama does not disclose the particular steps of providing an amount of sweetening agent that is insufficient to entirely mask the bitter,

sour and/or astringent taste of the edible product, and adding a plant sterol ester in an amount that, in combination with the sweetening agent, is effective to mask the bitter, sour, and/or astringent taste of the edible product. Rather, Sarama discloses that the combined plant sterol ester and L-arginine is added directly to finished edible products with sufficient plant sterol ester to mask the L-arginine. See page 20, paragraph 4.

During the interview, the Examiner pointed out that if the prior art teaches a range of sweetening agent and plant sterol that overlaps with the claimed amount, then adding those amounts would inherently teach the steps recited by the independent claims. More specifically, the Examiner questioned why adding a range of sweetener and plant sterol that encompasses the claimed range would not achieve the same result of insufficiently masking the bitter taste with the sweetening agent and then masking the bitter taste by combining the plant sterol ester. Applicants provide the following comments in Response.

Applicants respectfully submit that, even if Sarama teaches the same range of plant sterol ester recited by claim 1, the step of providing an amount of sweetening agent that is insufficient to mask a bitter taste of the edible product is not necessarily present in Sarama. As discussed in the interview, Sarama teaches making a composition comprising a first component and second component. The first component is L-arginine and the second component is the plant sterol ester. See page 3, second paragraph. The intent of Sarama is to mask the undesirable taste of the L-arginine, and only L-arginine, using plant sterol. The masked flavor composition is then added to a finished food product. See page 20, fifth paragraph. Thus, the amount of plant sterol added has nothing to do with the amount of sweetening agent present in the

already-existing food product. In other words, the product of Sarama is intended to be added to a pre-made or ready-to-make edible food, such as, baked goods. See the paragraph bridging pages 20 and 21. While Sarama does teach products having sweetening agent, Sarama never contemplates using less sweetening agent than necessary to mask a bitter taste because the edible product is already intended to have a pleasurable taste. See pages 27 to 28.

Due to the fact that Sarama teaches a pre-made composition which is added to an existing food product, the recited method steps would not be inherently performed by Sarama. First, because the sterol range disclosed by Sarama is described relative to the L-arginine/sterol mixture, the sterol composition taught by Sarama does not teach the overall percentage of the sterol present in the edible product. Thus, the 0.0001% to 25% sterol of the pre-made composition, once added to an existing edible food product, is not necessarily an amount that would mask a bitter taste of the edible product. Second, even if the ranges of both the sterol and the sweetening agent taught by Sarama overlaps with the claimed ranges of sterol and sweetening agent, Sarama never teaches the specific step of providing less sweetening agent than necessary to fully mask a bitter taste and the specific step of adding enough plant sterol to mask that taste. As discussed above, the amount of sterol of Sarama is chosen to mask the L-arginine. A range of sterol is recited because more sterol is necessary depending on the particular sterol chosen. See Examples 1-5 on pages 19 and 20. However, in accordance with the goal of Sarama, there is always just enough sterol to mask the L-arginine flavor. Thus, there is no basis to conclude that a composition of Sarama would necessarily have excess sterol to mask a bitter taste of the edible product.

Similarly, the sweetening agent range taught by Samara is broad because it is intended to encompass different edible products and varying desires of sweetness. See the paragraph bridging pages 27 and 28. However, there is no basis to conclude from Samara that any composition would necessarily have less than enough sweetener to mask a bitter taste of the edible product, and then necessarily have the plant sterol ester added to mask that bitter flavor.

To qualify as prior art under 35 U.S.C. §102, each and every feature recited in a rejected claim must be disclosed by the applied art. For at least the reasons provided above, Applicants submit that Samara does not disclose or suggest each and every feature recited by pending claims 1. Accordingly, Samara does not anticipate, nor render obvious, the subject matter recited by claim 1. Therefore, Applicants respectfully submit independent claim 1 should be deemed allowable over Samara. Similarly, independent claims 10-33 should be allowable for reciting a similar feature to claim 1.

Yoon is cited merely for teaching adding plant sterols to various edible products including water, juice, coffee, tea, milk, soy milk, and grain. Yoon does not teach or suggest providing an amount of sweetening agent that is insufficient to entirely mask a bitter taste. Thus, Yoon does not cure the above described deficiency of Samara. Vulpson is cited merely for teaching adding plant sterols to fermented milk products such as yoghurt. Vulpson does not teach or suggest providing an amount of sweetening agent that is insufficient to entirely mask a bitter taste. Thus, Vulpson does not cure the above described deficiency of Samara.

For at least the above reasons, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1, 3, 4, 7, 8, and 32 under 35 U.S.C. §102(b)

over Sarama, the rejection of claims 5, 6, 9, 11, 12, 20-23, and 29-31 under 35 U.S.C. §103(a) over Sarama, the rejection of claims 10, 13-18, and 26-28 under 35 U.S.C. §103(a) over Sarama in view of Yoon, and the rejection of claims 19, 24, and 25 under 35 U.S.C. §103(a) over Sarama in view of Vulpson.

Conclusion

Applicants respectfully submit that this application is in condition for allowance and such action is earnestly solicited. If the Examiner believes that anything further is desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below to schedule a personal or telephone interview to discuss any remaining issues.

In the event that this paper is not being timely filed, the Applicants respectfully petition for an appropriate extension of time. Any fees for such an extension, together with any additional fees that may be due with respect to this paper, may be charged to Counsel's Deposit Account Number 01-2300, referencing Docket Number 019075-00072.

Respectfully submitted,



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